

1 ORIGINAL
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0000141227

3 Date: December 31, 2012
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5 To: **Docket Control**
6 **Arizona Corporation Commission**
7 **1200 West Washington St.**
8 **Phoenix, AZ 85007**
9

10 From: Robert T. Hardcastle
11 Payson Water Co., Inc.
12 (661) 633-7526
13

14 FOR FILING ORIGINAL AND 13 COPIES INTO:

15
16 **DOCKET NO. W-03514A-12-0007**
17

18 Smith vs. Payson Water Co.
19

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23 By:

24 Robert T. Hardcastle
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Arizona Corporation Commission

DOCKETED

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DOCKETED BY

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 Robert T. Hardcastle
4 Payson Water Co., Inc.
5 P.O. Box 82218
6 Bakersfield, CA 93380-2218
7 *Representing Itself In Propia Persona*
8

9 **COMMISSIONERS**

10 Gary Pierce, Chairman
11 Paul Newman, Commissioner
12 Brenda Burns, Commissioner
13 Bob Stump, Commissioner
14 Sandra D. Kennedy, Commissioner
15

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|----|--------------------------------|---|-----------------------------|
| 16 | IN THE MATTER OF J. ALAN SMITH |) | Docket No. W-03514A-12-0007 |
| 17 | COMPLAINANT |) | |
| 18 | |) | MOTION TO DISMISS |
| 19 | |) | |
| 20 | VS. |) | |
| 21 | |) | |
| 22 | PAYSON WATER CO., INC., |) | |
| 23 | <u>RESPONDENT</u> |) | |
| 24 | | | |

25 On June 9, 2011 Complainant Smith filed informal complaint 2011-95692 alleging
26 wrongful disconnection of his water service under a Stage 3 mandatory water curtailment
27 condition.

28 On December 14, 2011 informal complaint 2011-95692 was closed after the
29 Complainant and Payson Water Co. agreed to a refund of \$200 related to reconnection of
30 his water service. According to Staff, Complainant Smith was “pleased” to learn from
31 Staff of the account adjustment (see Staff Report dated July 30, 2012).

32 On January 10, 2012 Complainant Smith (hereafter “Complainants”) filed a
33 Formal Complaint into Docket No. W-03514A-12-0007 based on previously submitted
34 informal complaint number 2011-99889.

35 On February 2, 2012 Payson Water Co filed an Answer to the Complaint and a
36 Motion to Dismiss.

1 On February 16, 2012 Complainant filed a Reply to Payson Water Co.'s Answer.

2 On February 23, 2012 a Procedural Order was issued scheduling a procedural
3 conference for March 9, 2012.

4 On March 9, 2012 a Procedural Conference was conducted with the Parties.

5 On March 29, 2012 Payson Water Co. filed a supplemental Motion to Dismiss.

6 On March 30, 2012 Payson Water Co. filed a Motion to Quash Brooke Utilities,
7 Inc. as a party to the Complaint.

8 On April 3, 2012 Complainant filed a Response and Objection to Respondent's
9 Motion to Quash Brooke Utilities, Inc. as a party to the Complaint.

10 On April 3, 2012 Complainant filed a Response and Objection to Respondent's
11 Motion to Dismiss and Motion to Deny.

12 On April 9, 2012 Payson Water Co. filed a Reply to Complainant's Response to
13 Payson Water Co.'s Motion to Dismiss and Motion to Deny.

14 On April 9, 2012 Payson Water Co. also filed a Reply by Payson Water Co. to
15 Complainant's Response and Objection to Respondent's Motion to Quash Brooke
16 Utilities, Inc. as a Party to the Complaint.

17 On April 13, 2012 Complainant filed a Response and Objection to Respondent's
18 Reply to Complainant's Response to Respondent's Motion to Dismiss and Deny.

19 On April 20, 2012 the Utilities Division of the Arizona Corporation Commission
20 ("Staff") filed a Notice of Filing regarding the status of a subpoena issued to Martin's
21 Trucking.

22 On May 3, 2012 Staff filed a Status of Mediation indicating that a settlement was
23 not reached by the parties and requested a hearing be scheduled.

24 On June 18, 2012 a Procedural Order was issued which set forth the hearing date
25 of August 7, 2012 and the compliance dates and deadlines as it relates to this Docket. In
26 addition, the Procedural Order provided that Payson Water Co. and Staff shall file
27 responsive rejoinder testimony no later than July 30, 2012 (see Procedural Order at page
28 2, lines 19-20).

1 On July 18, 2012 Complainant Smith filed a Notice of Complainant's Initial
2 Discovery and Disclosure.

3 On July 23, 2012 Complainant Smith filed a Notice of Complainant's Second
4 Discovery and Disclosure.

5 On July 30, 2012 Payson Water Co. timely filed its Rejoinder Testimony.

6 On July 30, 2012 the Utilities Division of the Commission's Staff timely filed its
7 Staff Response.

8 On July 30, 2012 Payson Water Co. filed its Supplemental Motion to Quash
9 Brooke Utilities, Inc. as a party to this Complaint.

10 On July 31, 2012 Payson Water Co. filed its Initial Disclosure and Discovery
11 pleading.

12 On August 1, 2012 Payson Water Co. filed its Supplemental Motion to Dismiss the
13 Complaint.

14 On August 2, 2012 Payson Water Co. filed its Initial Notice of Disclosure.

15 On August 6, 2012 Payson Water Co. filed its Supplemental Motion to Dismiss the
16 Complaint.

17 On August 7, 2012 Complainant filed its Motion to Continue Hearing on the
18 Complaint.

19 On August 7, 2012 a Hearing was conducted where various pending Motions were
20 heard, argued, and ruled upon. The Administrative Law Judge ruled that Payson Water
21 Co.'s Motion to Quash Brooke Utilities, Inc. as a Party to the Complaint would be
22 granted subject to the same conditions granted under Docket No. W-03514A-12-008. The
23 Administrative Law Judge also denied Payson Water Co.'s Supplemental Motion to
24 Dismiss. The Administrative Law Judge also granted Complainant's Motion to Continue
25 Hearing on the Complaint for a period not to exceed 90 days. The Administrative Law
26 Judge did not issue a dispositive ruling on Complainant's Motion to Compel compliance
27 with its Subpoena of witness Jim Pearson previously filed in this matter.

28 On August 7, 2012 Complainant filed its Fourth Notice of Discovery and
29 Disclosure.

1 On August 7, 2012 Complainant filed on behalf of prospective intervenor Tresca
2 an Application for Intervention and Motion to Intervene into Docket No. W-03514A-12-
3 0007.

4 On August 7, 2012 Complainant filed its Response and Objection to Respondent's
5 Motion to Dismiss and Motion to Deny.

6 On August 8, 2012 Complainant filed its Notice of Service of Subpoena dated
7 August 2, 2012 on Payson Water Co., Inc.

8 On August 9, 2012 Payson Water Co. filed its Objection to acceptance of Dennis
9 B. Treca as an intervenor.

10 On August 9, 2012 Payson Water Co. filed its Motion to Dismiss a Portion of the
11 Complaint.

12 On August 10, 2012 Payson Water Co. filed its Objection to Complainant's Fourth
13 Discovery and Disclosure.

14 On August 16, 2012 Payson Water Co. timely filed its responses to Complainant's
15 Subpoena dated August 2, 2012.

16 On August 20, 2012 Complainant filed its Response to Respondents Objection to
17 Tresca Application for Intervention.

18 On August 20, 2012 Complainant filed its Response to Respondents Motion to
19 Dismiss a Portion of the Complaint and Motion to Deny.

20 On August 20, 2012 Complainant files its Response to Respondents Objection to
21 Complainant Fourth Discovery and Disclosure and Motion to Deny.

22 On August 23, 2012 Payson Water Co. filed its Reply to Respondents Motion to
23 Dismiss a Portion of the Complaint.

24 On September 4, 2012 Complainant filed its Response to Respondents Reply to
25 Complainant's Challenge to Motion to Dismiss a Portion of the Complaint.

26 On September 6, 2012 Payson Water Co. filed its Motion to Quash Subpoena.

27 On September 13, 2012 Complainant filed its Response and Objection to
28 Respondent's Motion to Quash Subpoena.

1 On September 13, 2012 third party Mary E. Hansen filed her Application for
2 Intervention Motion to Intervene in the proceedings.

3 On September 17, 2012 the Administrative Law Judge filed its Procedural Order
4 that scheduled a procedural conference for September 28, 2012 at 10:00 a.m. in the
5 offices of the Commission. The Procedural Order also provided that counsel for the
6 Complainant shall file a notice of appearance prior to the procedural conference and
7 ordered counsel's attendance at all further proceedings as well as filing all subsequent
8 pleadings in this matter.

9 On September 24, 2012 Complainant filed its Motion to Initiate an Action in the
10 Superior Court to Compel Jim Pearson, Pearson Transport, and Others to Comply with
11 the Subpoena previously served.

12 On September 28, 2012 in the offices of the Commission a Procedural Conference
13 was conducted with Complainant's counsel now appearing on behalf of the Complainant.
14 Counsel did not previously file a Notice of Appearance but subsequently filed such
15 Notice on October 3, 2012.

16 **I. COMPLAINANT HAS NOT MOVED THIS MATTER AS IT**
17 **PREVIOUSLY PROMISED AND INDICATED TO THE COMMISSION**
18 **WHICH FORMED THE BASIS OF THE CONDITIONAL APPROVAL**
19 **OF THE CONTINUANCE.**
20

21 At the August 7, 2012 Hearing, after all parties were prepared to proceed,
22 Complainant, at the last second, requested a continuance not to exceed 90 days because
23 he felt unprepared and incompetent to represent himself in this matter. Complainant
24 represented to the Administrative Hearing Officer and the Commission that he required
25 not more than 90 additional days to sufficiently prepare to proceed in this matter. The
26 Administrative Law Judge granted Complainant's continuance based on this contingency.

27 At the September 28, 2012 Procedural Conference counsel appeared on behalf of
28 Complainant and subsequently filed his Notice of Appearance attesting to his
29 representation on October 3, 2012. At the time of Procedural Conference counsel for the
30 Complainant represented to the Commission and the other parties that he would require

1 not more than an additional 30 days to review the Complainant file and that of the
2 Administratively Noticed Gehring file in Docket No. W-03514A-12-0008.

3 Since entering the Notice of Appearance no further filing, contact, or
4 representation has been made by counsel on behalf of Complainant as to his readiness to
5 proceed to hearing. At least 146 days have passed since Complainant represented to the
6 Commission that he needed a continuance of not more than 90 days to prepare for
7 hearing and proceed in this matter. The continuance was granted by the Administrative
8 Law Judge on the condition that not more than the stated period of time would be
9 required to secure representation and familiarize counsel with the necessary documents.
10 Further, at least 94 days have passed since counsel represented to the Commission that
11 an additional 30 days would be required to review the necessary file documents before
12 he was prepared to proceed in this matter.

13 II. CONCLUSION

14 The Complainant has failed to prosecute this Complaint in a timely manner and
15 that which formed the basis of the granted continuance.

16 Accordingly, Payson Water Co.'s Motion to Dismiss should be granted for
17 failure of Complainant to fulfill his promises to the Administrative Law Judge and the
18 Commission as stated above. It has now been approximately 570 days since Complainant
19 initially filed his Complaint that was subsequently mutually settled at the informal
20 complaint stage in this proceeding. Such period of time is more than sufficient, more than
21 generous, and more than necessary to respect the Complainant's right of due process in
22 this matter. If Complainant were truly serious about the allegations contained in his
23 Complaint he could have sought resolution to such matters far before now.

24 As a result Payson Water Co.'s Motion to Dismiss should be granted and this
25 Docket administratively closed as quickly as possible by the Commission.

26
27 RESPECTFULLY SUBMITTED this 31st day of December 2012.

28 Payson Water Co., Inc.
29

By: _____

Robert T. Hardcastle
In Propria Persona

ORIGINAL and 13 copies filed
this 31st day December 2012, with:

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1200 West Washington St.
Phoenix, AZ 85007

And copies mailed to the following:

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1 By:

2 Robert T. Hardcastle
3 Payson Water Co., Inc.

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5 **END**